

From: Huber, Christopher
Sent: Sunday, February 03, 2019 3:17 PM
To: Michael Gross; Pearce, Melissa; sudhanthomas@jcboe.org
Cc: Repollet, Lamont; LeDet, Kellie; Bumpus, Robert; reginarobinson@jcboe.org; sedelstein@weiner.law; tmoore@riker.com
Subject: RE: [EXTERNAL] Jersey City Board of Education/Superintendent Resolution

Board President Thomas,

The Department is in receipt of your correspondence concerning the Jersey City Board of Education's Resolution relieving Dr. Marcia Lyles of her duties as Superintendent of Jersey City Public Schools. Based upon your representations and the representations of Board Counsel, the Board did not intend to terminate Dr. Lyles, but rather intended to place her on administrative leave for the duration of her contract. Due to the differing interpretations of the language of the Board's resolution, the invalidation of the Board's resolution is stayed to provide the Board the opportunity to clarify any action against Dr. Lyles. The Department recommends the Board move a resolution clarifying the Board's intention to place Dr. Lyles on administrative leave with pay.

In addition, until the resolution is clarified, Dr. Lyles remains the Superintendent and retains all rights, access and obligations afforded a superintendent pursuant to N.J.S.A. 18A:17-20(b). However, due to the uncertainty of the resolution and her current status, it is Dr. Lyles' choice whether to report to work on Monday, February 4, 2019.

Chris Huber
Special Assistant to the Commissioner
Department of Education

From: Michael Gross [mjgross@kenneygross.com]
Sent: Sunday, February 03, 2019 11:28 AM
To: Pearce, Melissa
Cc: sudhanthomas@jcboe.org; Repollet, Lamont; Huber, Christopher; LeDet, Kellie; Bumpus, Robert; reginarobinson@jcboe.org; sedelstein@weiner.law; tmoore@riker.com
Subject: [EXTERNAL] Jersey City Board of Education/Superintendent Resolution

Dr. Ms. Pearce,

Please be advised that our office represents the Jersey City Board of Education and the Jersey City Public Schools. I have been forwarded correspondence from your office sent [Friday, 04:44 PM](#), February 1, 2019, wherein you incorrectly indicated that the Board of Education resolution that "relieves the Superintendent of the performance of her duties in accordance with the terms of her Individual Employment Agreement and NJSA 18A:27-9" constituted a "termination" of employment in violation of NJSA 18A:17-20.2.

In response to your letter that was sent at the end of the business day, the Board President immediately responded that same evening [at 06:47 PM](#) indicating that the provisions of the Superintendent's contract as well as NJSA 18A:27-9 permit such actions, provided that she continues to be compensated. The Board President also included the actual Board resolution, copies of the statute, and Dr. Lyles contract. The President further, and most importantly clarified to you that the relieving of duties did not and will not result in any loss of compensation to the Superintendent as a result of this resolution. That was the reason the contract provisions and the statute were specifically cited in the Board resolution. That clarification should provide amble information that your conclusion that the resolution "terminated" Dr. Lyles employment was inaccurate and incorrect under the law.

The Board acted on my full counsel, as well as consultation with outside labor counsel, and therefore, in good faith but, importantly, in full compliance of the the provisions of the contract and the law, as outlined.

I must point out that there does not appear to be any legal authority for your actions of Friday evening, sua sponte. Additionally, Since the Jersey City Public Schools is no longer monitored by the State, there does not appear to be any authority in your office being able to nullify a Board resolution of this type under these circumstances without due process.

In any event, the problem now exists, that since Mr. Thomas' letter to you Friday evening, Dr. Lyles attorney has sent a letter yesterday, Saturday, February, 02/02/2019 afternoon to the district indicating that based upon your letter of Friday evening, that Dr. Lyles will be appearing for work Monday morning.

Given, that the district has not received any response in writing from you or anyone in the Department of Education, after you received Mr. Thomas letter with the supporting documents and explanation as to the validity of the Board action, the district would like to avoid any confrontation or confusion as to the Board's authority to have Dr. Lyles excluded from appearing for work, provided that she is still being paid.

Therefore, the district is requesting that you respond to Mr. Thomas' letter of Friday evening before the end of Sunday, 02/03/2019 by rescinding your inaccurate interpretation of the Board's resolutions which has created a lot of confusion and room for chaos at the District. This will avoid an unnecessary scene at the district administrative offices tomorrow morning.

It would best serve all parties that Dr. Lyles not appear for work on Monday, provided that she is being paid full compensation by the district per the Board resolution of Thursday, January 31, 2019 under the provision of her contract and law. There is no dispute of the law cited in the Board resolutions and the provisions in her contract.

I apologize for sending this letter on Super Bowl Sunday, but a response to Mr. Thomas' letter before Monday morning has become necessary in light of Dr. Lyles' attorney threatening that she is appearing for work on Monday. Your clarification will avoid an atmosphere that is in nobody's best interest.

Perhaps you made your initial determination without seeing or reviewing the actual Board resolution, or you may have relied upon third party information prior to having the actual resolution. The Board President has offered to pass a clarifying resolution to address any lack of clarity. It is not clear if an actual legal review of the Board's action and resolution was undertaken by your office before the transmission of your communication

Thank you for your cooperation and attention to this matter.

Michael J. Gross

Sent from my iPad